UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1994/11
22 June 1994

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-sixth session
Item 10 (a) of the provisional agenda

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

QUESTION OF HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Preliminary report on opposition to the impunity of perpetrators of human rights violations (economic, social and cultural rights), prepared by Mr. Guissé and Mr. Joinet, pursuant to Sub-Commission resolution 1993/37 1/

CONTENTS

	Paragraphs	Page
INTRODUCTION	1 - 6	3
I. CONSIDERATION OF THE PHENOMENON OF CORRUPTION	7 - 18	4
A. Analysis by the United Nations of corruption	7 - 10	4
B. Identification of legal and political means of combating corruption	11 - 18	4

GE.94-13111 (E)

CONTENTS (continued)

		Paragraphs	Page
II.	CONSIDERATION OF THE ROLE OF INTERNATIONAL FINANCIAL INSTITUTIONS	19 - 55	7
	A. Comments and observations by human rights bodies, whether treaty bodies or not, and by United Nations bodies and specialized agencies	21 - 44	7
	B. Identification of issues for study	45 - 55	12
III.	CONCLUSIONS AND RECOMMENDATIONS	56	14

ECONOMIC, SOCIAL AND CULTURAL RIGHTS: ISSUES OF PARTICULAR CONCERN

INTRODUCTION

1. The Sub-Commission, at its forty-fifth session, in resolution 1993/37 of 26 August 1993, welcomed the interim report (E/CN.4/Sub.2/1993/6) prepared by Mr. Guissé and Mr. Joinet, and requested them to submit a report, including conclusions and recommendations, on the first aspect of the question of impunity, with respect to civil and political rights. In addition, having regard to the interdependence and indivisibility of civil and political rights and economic, social and cultural rights, the Sub-Commission decided to request the Special Rapporteurs to continue their study on the second aspect of the question, concerning economic, social and cultural rights.

2. The decision has been taken to defer until 1995 the final version of the first part of the study, on civil and political rights, and to submit to the Sub-Commission at its forty-sixth session the continuation of the study, dealing with economic, social and cultural rights. The choice was guided by the complexity of this second part of the study and the constraints on document length (a maximum of 32 pages), which would not have allowed serious work to be done on both aspects of the report.

3. While numerous studies have been made of the history, legal basis and scope of economic, social and cultural rights as a class, (see the many studies on the right to development), very few have been devoted to the question of combating their violation.

4. This lacuna no doubt derives from the fact that penal action, which is relatively well suited to the prevention of serious violations of civil and political rights, cannot - since it involves strict interpretations - simply be transposed to the sphere of economic and social rights, which are by nature relative and constantly evolving.

5. The early investigations into this second aspect of the study led to the observation that an examination of corruption and the means of stemming it - particularly in government and in international relations - seemed to be the most pragmatic method of dealing with the question. This was already apparent during the International Meeting Concerning Impunity held in Geneva, at the Palais des Nations, from 2 to 5 November 1992:

> "The question of impunity is not, and should not, be limited to grave violations, such as summary executions, torture, disappearances, etc. It should also include serious violations of economic, social and cultural rights. Consider for a moment the consequences of the economic pillaging of the countries in the southern hemisphere, the fraudulent enrichment of high government officials ...". 2/

6. The most active non-governmental organizations in this sphere requested that the Rapporteur, who took part in a working meeting on the subject, should consider the role played, where relevant, by intergovernmental institutions such as the International Monetary Fund (IMF) and the World Bank in violating economic, social and cultural rights.

I. CONSIDERATION OF THE PHENOMENON OF CORRUPTION

A. Analysis by the United Nations of corruption

7. The Interregional Seminar on Corruption in Government, held under the aegis of the United Nations at The Hague (11-15 December 1989) and organized by the Department of Technical Cooperation for Development and the Crime Prevention and Criminal Justice Branch of the United Nations Office at Vienna, carried out analyses which identified impunity as an underlying element of the various forms of corruption.

8. The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana, 27 August-7 September 1990) noted in its resolution 7 on corruption in government that this form of corruption was universal; that although it had particularly deleterious effects on nations with vulnerable economies, those effects were felt throughout the world; and that corrupt activities of public officials could destroy the potential effectiveness of national programmes, and thus constitute a major hindrance to development.

9. Following on from the Eighth Congress, the Commission on Human Rights adopted resolution 1992/50, entitled "Fraudulent enrichment of top State officials prejudicial to the public interest, the factors responsible for it, and the agents involved in all countries in such fraudulent enrichment". This resolution stressed the necessity for determined action to combat the fraudulent or illicit enrichment of top State officials and to effect restitution of the assets thus diverted, as well as to prevent those practices which increasingly undermined both new and old democracies and constituted an obstacle to their development and their economies.

10. Corruption implies interaction between at least two parties: the party which agrees to it (the corrupted) and the party which proposes it (the corrupter) and therefore a sanction which covers both "partners" but takes into account the preponderant role of the corrupter. With this in mind, (a) the Eighth United Nations Congress mentioned above proposed the adoption of measures not only against corrupt officials but also against enterprises practising corruption; and (b) the Commission on Human Rights, in its resolution 1992/50 on the fraudulent enrichment of top State officials, pointed clearly to the responsibility of the North in connection with the fraudulent enrichment taking place in the South, and thus raised the question, still unclear in international law, of the restitution to despoiled peoples, for reinvestment in local economic, social and cultural development, of the funds which their leaders have extorted from them, as often as not with the complicity of foreign banks.

B. Identification of legal and political means of combating corruption

11. What strategy is required for taking action? First of all, a clear definition of the objective: the prevention of corruption is not an end in itself, but a major means of further strengthening democracy, realizing the right to development and ultimately ensuring respect for human rights and

fundamental freedoms, i.e., the continuity of the rule of law, as the Secretary-General of the United Nations observed at the opening of the World Conference on Human Rights in Vienna in 1993.

12. The first handicap to be overcome lies in the present-day shortcomings in international cooperation. In most countries, domestic criminal law does not recognize the corruption of foreign officials as an offence, and this leads to the difficult question of the extraterritoriality of criminal laws. In addition, the divergence in rules of criminal law from one country to another constitutes an obstacle to efficient international cooperation, particularly in the sphere of mutual judicial assistance, which is regarded as a major instrument for confronting the transnational aspect of corruption. This explains the concerns of the Commission on Human Rights, which in resolution 1992/50 on fraudulent enrichment noted with regret that although international law did not regard the misappropriation of public funds as a political offence, the law and judicial practice of most States did not allow the extradition of persons guilty of such misappropriation.

13. The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders made a point of the need for States to review the adequacy of their criminal laws, including procedural legislation and extradition law, in order to be able to combat practices which inherently facilitated corruption.

14. It has thus become urgently necessary to adopt an international convention which will ensure more homogeneous and more efficient penal action by supplementing it with measures that involve:

(a) Civil law (the nullity or voidability of certain contracts used to promote illicit enrichment, measures against the legal entities involved, etc.;

(b) Fiscal law, since all corruption like all illicit enrichment usually implies the existence of a fiscal fraud;

(c) Administrative law, through the establishment monitoring procedures (particularly for contracting), or even national authorities that are sufficiently competent technically, and therefore multidisciplinary and independent, to resist the pressure groups which batten on corruption and to build up a pattern of coordination conducive to cooperation.

This would provide a response to the technical complexity and increasingly alarming transnational dimensions of corruption and, more generally, of illicit enrichment. To this end, the competent United Nations authorities could usefully work towards an international convention based on existing drafts. An initial attempt was made in the Economic and Social Council in the late 1970s in the form of a draft international convention on the elimination of bribery in international commercial transactions. Mention may also be made of the draft international convention to prevent and combat the international corruption of public officials, presented by Mr. Paolo Bernasconi at the sixth international anticorruption conference (Cancun, 12-15 November 1993); the work of the twentieth workshop of the Institute of Criminology of Pantheon Assas University (15-16 June 1994), which mentioned the need for international

means of prevention; and the work in progress in the Organisation for Economic Co-operation and Development (OECD) on a recommendation on corruption in international commercial transactions which, in addition to penal sanctions, provides for the annulment of contracts.

15. Lastly, during their nineteenth conference in Malta (La Valletta, 14-15 June 1994), the Ministers of Justice of the member countries of the Council of Europe adopted a final resolution recommending the creation, within the Council, of a working group with particular responsibility for preparing an international convention against corruption. They expressed the hope that the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (opened for signature on 8 November 1990) and other international instruments on laundering would be speedily ratified and implemented effectively.

16. What part exists for specialized non-governmental organizations (NGOs)? The United Nations has played a historic role in the promotion of private organizations by instituting the consultative status which has given NGOs increasing influence, whether they are concerned with human rights, humanitarian action, development or the environment.

17. The recent emergence of NGOs specializing in the prevention of corruption (e.g., Transparency International and Antenna Internationale) could prove to be a determining factor:

(a) in developing awareness both transnationally and in State structures, as well as among ordinary citizens to induce them to fight the political apathy which makes corruption so widespread;

(b) in encouraging, from the point of view of "victim groups", an analysis of the mechanisms of corruption in order to repel it more successfully;

(c) in developing the powerful weapon of transparency as a means of preventing corruption.

The advancement of these NGOs might be a priority task for United Nations activity in the expanding sectors of technical assistance and advisory services.

18. The International Commission of Jurists, in a press release on 8 September 1993, said the following:

> "Combating the corruption of power is no longer a matter of morals but of the survival of impoverished populations. Crimes against the national economy and the pillaging of the resources of poor countries by third world dictators are practices which cause poverty and impoverishment to increase. It is essential to prevent the barefaced transfer of capital diverted from the countries of the southern hemisphere to western banks, who bear a heavy responsibility, in order to take a hand in strengthening democracy and the right to development."

II. CONSIDERATION OF THE ROLE OF INTERNATIONAL FINANCIAL INSTITUTIONS

19. Consideration of the role played by international financial institutions in the violation of economic, social and cultural rights is a complex matter; hasty judgments and conclusions should be avoided, since exclusive responsibility for human rights violations cannot be attributed to a single factor, a single policy or a single agent. Violations of and obstacles to the realization of economic, social and cultural rights are numerous, of different kinds and very often interdependent, hence the complexity.

20. It would therefore be reasonable, as a first step, to adopt an institutional approach and examine the comments made within the United Nations in regard to international financial institutions, so as to be in a position at a later stage to draw up preliminary recommendations which could be developed in the final phase of the report.

A. Comments and observations by human rights bodies, whether treaty bodies or not, and by United Nations bodies and specialized agencies

21. This section will review the studies, working documents and reports of the Secretary-General and the Special Rapporteurs and working groups in the sphere of economic, social and cultural rights, as submitted to the Sub-Commission and the Commission on Human Rights. It will also analyse the comments of bodies established under United Nations human rights instruments, as well as those of United Nations bodies and specialized agencies.

1. Non-treaty bodies

(a) Sub-Commission on Prevention of Discrimination and Protection of Minorities

(i) Special Rapporteur on the realization of economic, social and cultural rights

22. In his four reports, prepared successively from 1989 to 1992, 3/ the Special Rapporteur, Mr. Danilo Türk, gave particular consideration to the impact of the activities of international financial institutions, especially the World Bank and the International Monetary Fund (IMF), on the realization of economic, social and cultural rights, and made specific recommendations in that respect.

23. It would seem that the policies of international financial institutions, particularly structural adjustment and debt reimbursement policies, have adverse effects on economic, social and cultural rights, despite progress in recent years in taking some account of these rights and the beneficiaries directly affected. One of the complaints put forward by the Special Rapporteur (see document E/CN.4/Sub.2/1992/16, chapter II, "Ongoing barriers: the main challenges of our time") is that there is too great a difference between the theory behind the financial institutions and actual experience of the human, political, social and economic effects of their policies.

24. The Special Rapporteur devoted part of his final report to recommendations concerning international financial institutions, the aim being, of course, to fill existing gaps. It was proposed, inter alia, to encourage popular participation in the preparation of policies, for example, by means of specific cooperation with human rights bodies (NGOs and others), as well as to assess projects and policies and ultimately give more consideration to human rights.

25. It will be noted that, on the Special Rapporteur's recommendation, a Seminar was held at Geneva from 25 to 29 January 1993 on appropriate indicators to measure achievements in the progressive realization of economic, social and cultural rights; the seminar was considered a satellite meeting for the World Conference on Human Rights.

26. The conclusions and recommendations of the seminar state:

> "In the evaluation of economic and social development, consideration should be given to external factors relating to the prevailing international economic and political environment. The seminar noted serious concerns regarding the impact of development projects and policies of the World Bank and International Monetary Fund policies of structural adjustment on the enjoyment of human rights as well as of other inappropriate or destructive development strategies". (A/CONF.157/PC.73, para. 167)

(ii) Special Rapporteur on promoting the realization of the right to adequate housing

27. In his working document (E/CN.4/Sub.2/1993/15), the Special Rapporteur, Mr. Rajindar Sachar, considered that influential Governments were giving their support to international financial institutions (such as the World Bank and IMF) which appeared to threaten the full realization of the right to housing. After mentioning the work of the Special Rapporteur on economic, social and cultural rights, Mr. Sachar said that, in his opinion, it was of crucial importance to denounce internationally the harmful consequences of such policies and programmes and to lay stress on the responsibility of those institutions as regards human rights principles.

(iii) Special Rapporteurs on population transfers

28. In their preliminary report (E/CN.4/Sub.2/1993/17), the Special Rapporteurs, Mr. A.S. Al-Khasawneh and Mr. R. Hatano, showed that large-scale development projects financed by the World Bank had led to massive involuntary population transfers.

29. According to the report, over the past decade the World Bank changed its policies, in particular adopting resettlement guidelines and recommending measures to protect the lives, well-being and rights of displaced populations and as far as possible avoid population transfer and resettlement.

30. However, the Special Rapporteurs concluded:

"Although the Bank's relevant policies have mitigated the worst of the human rights violations of those affected by Bank-financed development, they have yet to be consistently applied or enforced." (E/CN.4/Sub.2/1993/17, para. 346)

(b) Commission on Human Rights

(i) Report of the Secretary-General on forced evictions

31. The report of the Secretary-General (E/CN.4/1994/20), in the chapter entitled "Causes and manifestations of forced eviction", referred to resolution 1991/12 of the Sub-Commission, which stated that forced evictions could be carried out, sanctioned, demanded, proposed, initiated or tolerated by a number of actors, including national Governments and bilateral and international financial institutions.

32. The report stated that when a Government willingly accepted development assistance or loans from international and monetary agencies, resulting in forced evictions as a "by-product of development", liability did not shift entirely to the provider of finance.

(ii) Report of the Working Group on the Right to Development

33. The report of the Working Group on its first session (E/CN.4/1994/21 and Corr.1) stated that the players involved in the right to development interacted at the national, regional and international levels; at the international level it identified, inter alia, the international financial institutions. According to the report, an obstacle to the realization of the Declaration on the Right to Development was that its principles were rarely taken into account in agreements on external debt repayment and structural adjustment. In addition, the Working Group took note of the obstacles to the implementation of economic, social and cultural rights as set forth in the final report of the Special Rapporteur on the realization of economic, social and cultural rights.

34. In addition to these various reports, studies and working documents, the Sub-Commission, in its resolutions on the realization of economic, social and cultural rights (resolutions 1991/27, 1992/29), and the Commission on Human Rights, in its resolutions entitled "Effects on the full enjoyment of human rights of the economic adjustment policies arising from foreign debt and, in particular, on the implementation of the Declaration on the Right to Development" (resolutions 1992/9, 1993/12 and 1994/11), expressed their concern about the adverse repercussions of structural adjustment policies in the realization of economic, social and cultural rights.

2. Organs established under United Nations human rights conventions

(a) Committee on Economic, Social and Cultural Rights

35. As the Special Rapporteur on the realization of economic, social and cultural rights has said, the Committee has concerned itself with the role of

structural adjustments in the States parties to the International Covenant on Economic, Social and Cultural Rights, and therefore with the capacity of those States to meet their international obligations.

36. In its general comment No. 2 (1990) on international technical assistance matters (art. 22 of the Covenant), adopted at its fourth session in 1990, the Committee stated the following:

> "A matter which has been of particular concern to the Committee ... is the adverse impact of the debt burden and of the relevant adjustment measures on the enjoyment of economic, social and cultural rights in many countries. The Committee recognizes that adjustment programmes will often be unavoidable ... Under such circumstances, however, endeavours to protect the most basic economic, social and cultural rights become more, rather than less, urgent. States parties to the Covenant, as well as the relevant United Nations agencies, should thus make a particular effort to ensure that such protection is, to the maximum extent possible, built-in to programmes and policies designed to promote adjustment. Such an approach, which is sometimes referred to as 'adjustment with a human face' ... requires that the goal of protecting the rights of the poor and vulnerable should become a basic objective of economic adjustment. Similarly, international measures to deal with the debt crisis should take full account of the need to protect economic, social and cultural rights through, inter alia, international cooperation."

37. Also in its general comment No. 2 on international technical assistance measures, the Committee asserted that international financial institutions and development agencies should:

> "... scrupulously avoid involvement in projects which ... involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation ... Every effort should be made, at each phase of a development project, to ensure that the rights contained in the Covenants are duly taken into account."

38. In addition, the Special Rapporteur, Mr. Louis Joinet, asked the Committee, at a working meeting held during its forty-seventh session, to give more detailed thought to impunity, the enjoyment of economic, social and cultural rights and serious violations of those rights.

(b) Committee on the Rights of the Child

39. In connection with the consideration of reports of States parties to the Convention on the Rights of the Child and in its conclusions, the Committee on the Rights of the Child, at its third session, noted that structural adjustment measures hindered the implementation of the rights guaranteed by the Convention and had a deleterious effect on the situation of children, particularly those belonging to low-income categories and those living in rural areas. It took the opportunity of remarking that under article 4 of the Convention, States parties should apply the Convention to the maximum extent of their available resources (report on the third session, CRC/C/16, 2 March 1992).

3. United Nations bodies and specialized agencies

40. A number of United Nations bodies and specialized agencies transmitted information and comments on the repercussions and prospects which the debt crisis and adjustment programmes have for the effective enjoyment of economic, social and cultural rights in developing countries; these were in connection with a comprehensive report of the Secretary-General prepared in pursuance of Commission on Human Rights resolution 1993/12 (E/CN.4/1994/17). Taken as a whole, these communications express criticism in this regard. Apart from the report it may be interesting to give some thought, for example, to the Human Development Report 1992 of the United Nations Development Programme (UNDP), 4/ as well as to a recent report by UNICEF; the former provided a basis of reference for the Special Rapporteur on economic, social and cultural rights and contains relevant recommendations, while the latter measures the social cost of the policies of the international financial institutions.

(a) United Nations Development Programme (UNDP)

41. According to the Human Development Report 1992, IMF and the World Bank drifted away from their mandates and were unable to achieve their objectives. IMF's policy is said to have slowed economic growth, and in addition, from 1986 to 1990, IMF was actually withdrawing funds from developing countries since it benefited from a net transfer of 6.3 billion dollars a year. As a result, according to the authors of the report, "The current system is both inefficient and unjust". Similarly the World Bank, it is said, rather than recycling global surpluses to poor countries, actually enjoyed a transfer from the developing countries.

42. The 1992 report, and the 1993 report as well, therefore called for a major reform of IMF and the World Bank. In addition to a return to their initial mandates, accompanied by various innovations, proposals included assessing projects and programmes in such a way as to take greater account of factors other than economic and financial factors, particularly impact on people. A participatory form of development was also suggested, involving, for instance, the developing countries having some say in the operation of the international financial institutions.

(b) United Nations Children's Fund (UNICEF)

43. In a report entitled "Public Policy and Social Conditions", prepared in connection with the programme on monitoring the transition in central and eastern Europe (MONEE) and presented in Geneva on 26 January 1994, UNICEF assessed the social cost of the economic reforms undertaken in the course of the last five years in nine eastern European countries (Albania, Bulgaria, Czech Republic, Hungary, Poland, Romania, Russian Federation, Slovakia, Ukraine). The representative of UNICEF criticized western institutions such as IMF and the World Bank which had advised the political leaders of those countries on ways and means of economic reform without paying sufficient attention to its social consequences. Children's well-being had deteriorated to an unprecedented extent, according to the Director-General of UNICEF, Mr. James Grant, which was not good for the children or their country, for democracy or indeed for peace.

44. In order to study the social consequences of changes recommended by IMF and the World Bank, the International Child Development Centre, set up by UNICEF in Florence, Italy, has decided to publish a study every six months.

B. Identification of issues for study

45. The various comments and observations made by the human rights bodies and by United Nations bodies and agencies with regard to the international financial institutions demonstrate that the latter play a part in the violation of economic, social and cultural rights, but without being exclusively responsible.

46. There are two conflicting views concerning the true role of the international financial institutions. For some, any prevention and protection whatsoever of economic, social and cultural rights would require a thoroughgoing reform of those institutions; for others, certain reforms within the institutions themselves would be adequate.

47. As things stand, the second hypothesis appears more realistic. It is therefore proposed that a study should be made of the desirability of incorporating human rights criteria in all stages of IMF and World Bank activities, from the formulation to the implementation of economic projects and programmes. This would mean combining a technical - financial and economic - approach with a human one consonant with human rights.

48. The aim would not be to promote "conditionality" policies, which tend to make economic assistance conditional on respect for human rights and are the subject of numerous misgivings, particularly in their most radical form, that of the embargo. The aim would be "positive conditionality", related to the advisory services and technical cooperation programmes which are a rapidly expanding activity of the Centre for Human Rights. When the decision-making bodies of the World Bank decide on an aid programme for a specific country, an adequate share should be earmarked, where appropriate, by redeployment within the "envelope", for activities to promote and protect human rights (for example, training of magistrates and police, modernization of justice and the prison system, dissemination of humanitarian law in the armed forces, teaching of human rights). The allocation of assistance would to some extent be linked to the effective use of the credits earmarked for the promotion of human rights.

49. Along the same lines, the study should also examine the need to encourage participation in these activities, at their various stages, by the human rights bodies and the main countries concerned, particularly those countries addressed by the policies of the international financial institutions, namely the developing countries. It would be seen whether those participants could thereby ensure that IMF and the World Bank took account of the economic, social and cultural situations specific to each country and whether their participation would help towards individual policies for each. Thus it would not be a question of applying a single theory as the basis of a single policy (for example, structural adjustment policy) intended to cover a multiplicity of situations but, on the contrary, of formulating and applying different policies for different specific economic, social and cultural circumstances.

50. Consideration should also be given to the desirability of conducting systematic assessments during the elaboration and implementation, and also the follow-up, of economic projects and programmes, with particular reference to their impact on economic, social and cultural rights.

51. The field of study should cater for the fact that, as pointed out, the international financial institutions do not have exclusive responsibility, changes in economies and their increasing interdependence having diversified the players and responsibilities concerned. States are among the main protagonists of the national and international economic and social situation, and are thereby responsible too where economic, social and cultural rights are involved. From the point of view of international law, as the Committee on Economic, Social and Cultural Rights pointed out in document A/CONF.157/PC/62/Add.5, although it has often been asserted that economic, social and cultural rights are not justiciable, it is clear, however, that many and perhaps all of the rights do have at least some elements which are already, in the law and practice of some States, justiciable. Moreover, individuals or groups who are the victims of violations of their economic, social and cultural rights do have administrative or judicial remedies.

52. In France, for example, the Paris Court of Appeal, in a judgement dated 17 September 1993, held that 23 homeless families who, over the years, had never obtained any tangible results from the housing applications they had addressed to the Offices d'HLM (Housing Authorities) of the City of Paris and its periphery had been obliged by necessity to occupy premises which had been abandoned for several years. The Court stated that the right to housing was included in a number of international treaties ratified by France, particularly the International Covenant on Economic, Social and Cultural Rights (art. 11), and that article 7 of the Act of 31 May 1990 provided that the guarantee of the right to housing was an obligation of solidarity for the nation as a whole. The Court granted the appellants six months to find homes. Public opinion must therefore be alerted to the existence of such remedies and States be required to respect their commitments to social and economic justice. This point should be considered in detail.

53. At the international level, in accordance with the provisions of the International Covenant on Economic, Social and Cultural Rights, States parties have an obligation to guarantee as a minimum the fundamental rights of subsistence of every individual (comments Nos. 2 and 4 of the Committee on Economic, Social and Cultural Rights). It should therefore be recommended that encouragement be given to the ratification of this instrument by States which have not yet taken that step. Serious consideration should also be given to the question of establishing an optional protocol whereby concerned individuals and groups could submit official communications to the Committee on Economic, Social and Cultural Rights regarding violations of those rights; once again, there are two conflicting views on the matter. The establishment of a complaints procedure of this type, while not conferring jurisdictional power on the Committee, would at least enable - and this is a third view - some specific violations of economic, social and cultural rights to be noted; and the dissemination of the Committee's comments on the subject to the public would lead to a universal awareness of the obligations of States and international financial institutions in regard to respect for and realization of economic, social and cultural rights. It may be noted that arrangements of

this kind already exist in UNESCO with respect to articles 13 to 15 of the Covenant, in ILO with reference to article 8, in Economic and Social Council resolution 1503 (XLVIII) and in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (General Assembly resolution 45/158, annex).

54. Among States as a whole, there must be recognition of the special responsibility of the wealthiest countries, whose economic and political decisions have repercussions on the world economy and therefore on the economic situation of the developing nations; it is those very countries which have the final say in the international financial institutions, which are intergovernmental organizations. That is why the question raised by certain non-governmental organizations of bringing proceedings against high-level IMF and World Bank officials poses a double problem, in that ultimately these institutions apply a policy decided by the member States, and secondly, criminal law being a matter of strict interpretation, the rule that offences and penalties attach to individuals would be involved.

55. Without in the least concealing the responsibility of States overall in regard to their own economic, social and cultural situation, action is required in terms of political and economic decision-making by the richest countries so as to make them aware of the need to reconcile economic efficiency and respect for human rights. In addition to action by the human rights bodies and United Nations bodies and agencies, the community of non-governmental organizations has a decisive role to play in drawing the attention of the international community, and particularly its political decision-makers, to violations of economic, social and cultural rights and in bringing pressure on States and international organizations to carry out reforms and adopt the necessary measures.

III. CONCLUSIONS AND RECOMMENDATIONS

56. The final report should examine in detail the main points of this study, in particular on the basis of the following conclusions and recommendations:

1. Prevention of corruption

(a) Better identification of ways and means of combating the transnational dimension of corruption;

(b) Elaboration of international instruments to encourage international mutual assistance;

(c) A comparative study of national law, practice and institutions directed towards combating corruption, with a view to the preparation of recommendations;

(d) Development aid by specialized NGOs.

2. Role of the international financial institutions

(a) A legal study of the apportionment between officials and States parties of whatever responsibilities exist;

(b) Consideration of the possibilities offered by the concept of "positive conditionality" in the provision of aid by the international financial institutions, particularly the World Bank.

3. Economic embargo

Is this compatible with the principle of indivisibility and interdependence of civil and political rights on the one hand, and respect for and promotion of economic and social rights on the other, in that an economic embargo imposed as a condition for the restoration of human rights may have the effect of aggravating the non-observance of economic and social rights? This should be considered not only from the standpoint of the economic situation (the length of the embargo) but also at the structural level (the emergence of mafia-type networks which become more highly organized the longer the embargo lasts, remaining embedded in the institutional framework even after the measure has been lifted).

4. Treaty protection of economic, social and cultural rights

(a) Elaboration of an optional protocol enabling the Committee on Economic, Social and Cultural Rights to receive and consider communications;

(b) Detailed consideration of the conflicting views involved which might make it possible to identify an intermediate course of action;

(c) Contribution of the Committee on Economic, Social and Cultural Rights to a detailed study of the link between impunity, the exercise of economic, social and cultural rights and serious violations of those rights.

Notes

1/ Owing to difficulties of contact, due to distance, between the joint authors, the manuscript of this report, drafted by Mr. Joinet, could not be submitted in time to Mr. Guissé before the date stipulated for transmission to the editor.

2/ Justice not impunity, published by the International Commission of Jurists (ICJ) in Geneva and the Commission nationale consultative des droits de l'homme - CNCDH - France.

3/ Preliminary report, E/CN.4/Sub.2/1989/19;
First progress report, E/CN.4/Sub.2/1990/19;
Second progress report, E/CN.4/Sub.2/1991/17;
Final report, E/CN.4/Sub.2/1992/16.

4/ Although the report is a UNDP publication, it states that the opinions expressed in the report are not necessarily those of UNDP itself.